

1 EDUARDO A. CALVO
2 WILLIAM N. HEBERT
3 SHANE A. INTIHAR
4 KEVIN O. MOON (*pro hac vice*)
5 CALVO & CLARK, LLP
6 259 Martyr Street, Suite 100
7 Hagåtña, Guam 96910
8 Tel: (671) 646-9355
9 Fax: (671) 646-9403

10 Attorneys for Plaintiffs
11 WATTS CONSTRUCTORS, LLC AND
12 WATTS-HEALY TIBBITTS A JV

13 **IN THE DISTRICT COURT OF GUAM**
14 **TERRITORY OF GUAM**

15 WATTS CONSTRUCTORS, LLC, an Iowa
16 limited liability company, and WATTS-
17 HEALY TIBBITTS A JV, a joint venture,

18 Plaintiffs,

19 v.

20 PORT AUTHORITY OF GUAM, a Guam
21 public corporation,

22 Defendant.

Case No. 10-00002

**PLAINTIFFS' MEMORANDUM
REGARDING SERVICE OF
MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
DEFENDANT'S MOTION TO
DISMISS**

1 **I. INTRODUCTION**

2 On March 8, 2010 at 6:50 p.m. Plaintiffs Watts Constructors, LLC (“Watts”) and
3 Watts-Healy Tibbitts A JV (the “Joint Venture”) through their counsel filed a Memorandum of
4 Points and Authorities in Opposition to Defendant’s Motion to Dismiss (the “Opposition
5 Memo”) with this Court through its on-line e-filing system. *See* Notice of Electronic Filing (the
6 “E-filing Notice”) attached hereto as Exhibit A. The Opposition Memo was, thereupon, entered
7 into the docket by this Court’s automated case management system as Document Number 16.
8 *Id.* By filing the Opposition Memo via the Court’s e-filing system, Plaintiffs’ counsel intended
9 to effect service upon Defendant Port Authority of Guam (the “Port”) through its counsel which
10 Plaintiffs’ counsel understood to be registered or deemed registered to receive electronic service.
11 (*See* ¶ 3 of Declaration of Shane A. Intihar in Support of Plaintiffs’ Memorandum Regarding
12 Service of Memorandum of Points and Authorities in Opposition to Defendant’s Motion to
13 Dismiss (filed herewith) (“Intihar Decl.”).) Based upon certain discoveries made by Plaintiffs’
14 counsel today, it now appears that the Port’s counsel is not registered to receive electronic
15 service and, thus, that Plaintiffs’ March 8 filing with this Court failed to properly effect service
16 upon the Port. (*Id.* at ¶ 4.) This mistake, as explained further below, was made in good faith and
17 will in no way prejudice the Port. Accordingly, Plaintiffs request this Court to accept notice of
18 the Opposition Memo served today on the Port.

19 **II. SOURCE OF MISUNDERSTANDING**

20 On December 14, 2009, Deputy Clerk Virginia Kilgore provided a tutorial on how
21 to properly utilize the Court’s e-filing system to the administrative staff of Plaintiffs’ counsel.
22 (*Id.* at ¶ 5.) Following the tutorial, Plaintiffs’ counsel understood (it now appears incorrectly) that
23 beginning with the new year that every attorney that entered a written notice of appearance in a
24 pending matter before this Court would be deemed to have registered to receive service
25 electronically. (*Id.*) This view, albeit incorrect, nevertheless appeared to be supported by the
26 Court’s admonition that “[a]ll attorneys practicing in Guam need to complete a training session
27 and registration process.” *See* eFiling at <http://www.gud.uscourts.gov/?q=efiling>. As such,
28 Plaintiffs’ counsel believed that the Port through its counsel had consented to electronic service

1 pursuant to Fed. R. Civ. P. 5(a)(2)(E), U.S.D.C. Guam Gen. Orders 05-0012, 05-0013 and the
2 Administrative Procedures for the Electronic Filing, Signing, Verifying, and Servicing of Civil
3 and Criminal Documents (the “E-filing Procedures”) adopted by this Court. For this reason,
4 Plaintiffs’ counsel believed that by filing the Opposition Memo electronically with this Court on
5 March 8 its also simultaneously effected service on the Port’s counsel. (Intihar Decl. at ¶ 6.)

6 As part of the e-filing process, the Plaintiffs’ counsel selected the present case,
7 *Watts Constructors, LLC et al v. Port Authority of Guam; Case Number 1:10-cv-2*, from a drop
8 down menu on the Court’s on-line e-filing system. (*Id.* at ¶ 7.) In doing so, the input fields were
9 populated with the names and addresses for both plaintiffs’ and defendant’s counsel. Thus,
10 rather than indicate to Plaintiffs’ counsel that the Port’s counsel had not registered to receive
11 electronic service, this appeared to support its understanding of how the Court’s new electronic
12 filing and service system operated. (*Id.*)

13 **III. DISCOVERY OF MISTAKE**

14 Pursuant to section VI. A. of the E-filing Procedures, “three additional days [are]
15 allowed for responding...to electronic service.” Thus Plaintiffs’ counsel anticipated that the Port
16 would file a reply on March 18. When Plaintiffs’ counsel had not been served with the Port’s
17 reply brief by March 23, it emailed the Port’s counsel to confirm that the Port had waived its
18 right to file a reply brief. (Intihar Decl. at ¶ 8.) This morning, counsel for the Port called to
19 inform Plaintiffs’ counsel that the Port was never served with the Opposition Memo. (*Id.*)
20 Plaintiffs’ counsel, in turn, explained to the Port’s counsel that it served the Opposition Memo
21 upon the Port’s counsel electronically through the Court’s electronic filing system. (*Id.*) After
22 speaking with Port’s counsel, Plaintiffs’ counsel contacted the Court to confirm that the Port had
23 been served. After discussing the matter with Deputy Clerk Kilgore, Plaintiffs’ counsel
24 discovered for the first time that electronic service may only be effected on certain attorneys as
25 listed on the Court’s website at <https://ecf.gud.uscourts.gov/rep/DCElecServ.htm>. Following
26 this discovery, Plaintiffs’ counsel immediately reviewed this list and discovered that neither of
27 the Port’s attorneys of record is listed. (*Id.* at ¶ 9.) Immediately thereafter, Plaintiffs’ counsel
28 served a hard copy of the Opposition Memo on the Port’s counsel. (*Id.*)

1 **IV. REQUEST FOR NOTICE**

2 Plaintiffs' counsel now recognizes as faulty its presumption that the Port through
3 its counsel consented to electronic service and that (pursuant to Fed. R. Civ. P. 5 and section VI.
4 B. of the E-filing Procedures) Plaintiffs should have served a hard copy version of the
5 Opposition Memo on the Port's counsel on March 8. Nevertheless, because this Court has yet to
6 set a date for hearing on the Port's motion to dismiss and thus the Port will have a full seven (7)
7 days to respond to the Opposition Memo served upon it today (as is its right pursuant to Local
8 Rule 7.1d2(B)) and because Plaintiffs' counsel at all times acted in good faith in attempting to
9 use the Court's new e-filing system, Plaintiffs request that this Court take notice of the
10 Opposition Memo filed with this Court on March 8 and served upon the Port through its counsel
11 today. Pursuant to such notice by the Court, the Port would have until March 31 to file and serve
12 its reply brief.

13 Dated this 24th day of March, 2010.

14 CALVO & CLARK, LLP
15 Attorneys for Plaintiffs
16 Watts Constructors, LLC and
Watts Healy Tibbitts A JV

17
18 By:

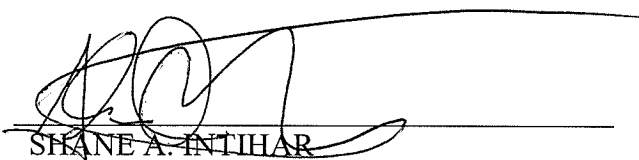
19 
SHANE A. INTIHAR

EXHIBIT A

Shane Intihar

From: charles_white@gud.uscourts.gov

Sent: Monday, March 08, 2010 6:51 PM

To: charles_white@gud.uscourts.gov

Subject: Activity in Case 1:10-cv-00002 Watts Constructors, LLC et al v. Port Authority of Guam Opposition

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Civil/Criminal CM/ECF System

District Court of Guam

Notice of Electronic Filing

The following transaction was entered by Intihar, Shane on 3/8/2010 at 6:50 PM CST and filed on 3/8/2010

Case Name: Watts Constructors, LLC et al v. Port Authority of Guam

Case Number: 1:10-cv-2

Filer: Watts Constructors, LLC
Watts-Healy Tibbitts A JV

Document Number: 16

Docket Text:

Opposition re [9] Memorandum in Support of Defendant's Motion to Dismiss by all plaintiffs.

1:10-cv-2 Notice has been electronically mailed to:

Eduardo A. Calvo ecalvo@calvoclark.com, ameno@calvoclark.com, atydingco@calvoclark.com, cclaw@calvoclark.com, creyes@calvoclark.com, mpereda@calvoclark.com

Shane A. Intihar sintihar@calvoclark.com, ameno@calvoclark.com, atydingco@calvoclark.com, cclaw@calvoclark.com, creyes@calvoclark.com, mpereda@calvoclark.com

1:10-cv-2 Notice has been delivered by other means to:

Ignacio Cruz Aguigui
Lujan, Aguigui and Perez LLP
Suite 300, DNA Building

238 Archbishop Flores Street
Hagatna, GU 96910-

Kevin O. Moon
Calvo and Clark, LLP
One Lombard Street, Second Floor
San Francisco, CA 94111

Rebecca Perez Santo Tomas
Lujan Aguigui and Perez LLP
Suite 300, DNA Building
238 Archbishop Flores Street
Hagatna, GU 96910

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:C:\Documents and Settings\ameno\Desktop\Plaintiffs' Memorandum of Points and Authorities on Opposition to Defendant's Motion to Dismiss.pdf

Electronic document Stamp:

[STAMP dcecfStamp_ID=1088563379 [Date=3/8/2010] [FileNumber=130131-0]
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